IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5651 of 1997
WITH
SPECIAL CIVIL APPLICATION No. 9671 of 1998

For Approval and Signature:
HON'BLE MR.JUSTICE D.H.WAGHELA

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NARAINDAS MOTIRAM TEHELYANI - Petitioner(s)

Versus

GUJARAT WATER RESOURCES DEVLOPCORPN LTD. & 1 - Respondent(s)

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Appearance :
MR KM PATEL for Petitioner No(s).: 1.
MR PARESH UPADHYAY for Respondent No(s).: 1,2.

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CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date : 04/08/2005

ORAL JUDGMENT

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1. Both these petitions by the same petitioner invoking Article 226 of the Constitution of India and praying to quash the order dated 10/06/1997 of Compulsory Retirement of the petitioner, incidentally also challenges the subsequent order dated 27/08/1998 accepting his resignation dated 12/05/1997, and denial of promotion.

2. It is the case of the petitioner that he was appointed as Supervisor in 1970 in Kheda District

Panchayat and transferred to the Respondent No. 1 – Corporation in the year 1978. He was promoted as Deputy Engineer in 1979 and as Executive Engineer in 1986. In March 1990, a charge-sheet came to be issued and pending enquiry, the petitioner had to approach this Court to ensure that the pendency of the enquiry did not impede his further promotion. In October, 1994, he was exonerated of the charges, even without holding any enquiry. He was denied promotion in December 1994 when higher post had fallen vacant. Then, the petitioner approached this Court by way of Special Civil Application No. 26 of 1995, but in December, 1995 he was transferred to Bhuj where one of the subordinate employee is stated to have assaulted the petitioner. The petitioner made complaints and requested the management to take suitable action against the assailant. Since no actions were being taken to ensure the safety of the petitioner, he expressed his desire to resign in view of threat and danger to his life and requested that compensation for loss of future service and voluntary retirement benefits may be accorded to him. Pending consideration of such written request dated

12/05/1997, the impugned order dated 10/06/1997, compulsory retiring the petitioner came to be passed.

3. According to the petitioner, the impugned order of compulsory retirement was without any authority of law, baseless and arbitrary, since his service record was clean. Except for the period between 14/12/1993 to 31/03/1994, no adverse remarks were communicated to the petitioner. Even those adverse remarks were communicated after inordinate delay of about two years and they were recorded by Superintending Engineer against whom the petitioner had made representation. The representations against those adverse remarks were ordered to be disposed of by order dated 13/01/1997 of this Court in Special Civil Application No. 9601/1996. However, the respondents had not taken any final decision till the impugned order came to be passed. It is submitted that even those adverse remarks did not show that the petitioner was inefficient and, on that basis, it is alleged that the impugned order was passed *mala fide* and in colourable exercise of power.

4. The contentions of the petitioner are countered by affidavit-in-reply of the Administrative Officer of the Respondent No. 1-Corporation wherein it is averred that the respondent had taken policy decision vide circular dated 08/05/1991 and decided that in absence of any Rules and procedure prescribed by the Corporation, all the existing Rules and procedure prescribed by the Government shall be followed in the Corporation in the administrative matters. It is also stated that action of compulsorily retiring the petitioner was taken after consideration by the Personnel Committee of the overall record and working of the petitioner and finding to the effect that it was not in the public interest to continue him on the post of Executive Engineer, which was directly related with the Public Utility Services. It was averred that the Personnel Committee of the Corporation included more than one senior responsible officers which came to the conclusion that the continuance of the petitioner in the active service was not in public interest and therefore, without assigning any stigma he was retired with all retiral benefits. As regards subsequent acceptance of

resignation tendered by the petitioner, it is averred that since the petitioner was compulsorily retired vide order dated 10/06/1997, there was no occasion for the authorities to process his resignation; but since the petitioner had challenged the order of pre-mature retirement, it was found to be necessary to take some decision with regard to resignation of the petitioner, requesting the Corporation to accept his resignation. It was in such circumstances, the resignation tendered by the petitioner was accepted vide order dated 27/08/1998 with effect from 15/08/1997 as requested by him.

5. There is no dispute about the fact that the impugned order dated 10/06/1997 does not cast any stigma and is not preceded by any enquiry. However, it may be necessary to read that order against the backdrop of a detailed representation dated 12/05/1997 of the petitioner. In that representation, running into seventeen typewritten pages, the petitioner has made number of allegations against his superior officers. It is stated therein that the petitioner had demanded inquiry into those scandals

which were going on in the Respondent -Corporation and made direct allegations against the 'Head Office' for fully co-operating and carrying out scandals and he demanded replies to his allegations. He has referred to his 88 letters bearing dates from 24/04/1989 to 14/05/1991 demanding inquiry into various irregularities. Towards the end of the representation, the petitioner has stated that he wants to be relieved of the life, which was full of tension, and his insistently requested to accept his resignation and grant him appropriate compensation for his remaining service of five years as also the benefits due upon voluntary retirement. He has also stated that he was suspecting a conspiracy to kill him and it was impossible for him to serve under such circumstances and threat. It is categorically stated that under no circumstances, he would be in a position to remain present on duty after 15/08/1997. By adding footnotes, he has further requested the Administrative Officer to ensure that the money due to him under the Rules of the Respondents were paid immediately on termination of his service. Thus in short, the petitioner has made it absolutely clear

by a detailed representation-cum-resignation that he was not interested in continuance of his service, and under the perceived threat to his life, it would be impossible for him to serve after 15/08/1997.

6. With the above background of facts, learned counsel for the petitioner vehemently argued that the petitioner was driven to such a situation due to consistent denial of promotion and threat to his life, but his option to withdraw the resignation was open till the resignation was accepted. However, the Respondent had issued the impugned order before the date on which resignation was intended to be operative and, therefore, the order compulsorily retiring the petitioner could not be based upon the said representation. Learned counsel relied upon the judgment of Supreme Court in **State of Gujarat v. Umedbhai M. Patel (AIR 2001 SCA 1109)** for the defined principles, and law relating to compulsory retirement as culled out in Para: 11 of that judgment. The first principle to be found therein is that, whenever the service of the public servant is no longer useful to the general administration, officer can be

compulsorily retired for the sake of public interest and another important principle is that even uncommunicated entries in the confidential records can be taken into consideration but compulsory retirement cannot be resorted to as a punitive measure. Another judgment of the Supreme Court in **M.S. Bindra v. Union of India (AIR 1998 SC 3058)** was relied upon for the proposition that judicial scrutiny of any order imposing pre-mature compulsory retirement is permissible if the order is either arbitrary or *mala fide* or if it is based on no evidence. The judgment of the Supreme Court in **Bank of India and other v. O.P. Swarnakar and other [(2003) 2 SSC 721]** was relied upon to submit that the representation-cum-resignation of the petitioner was an offer which could have been withdrawn before its acceptance.

7. Learned counsel for the Respondent argued that the Rules and procedure prescribed by the Government from time to time in respect of administrative, financial and technical and other matters were operative in the Respondent-Corporation except to the

extent of relaxation therein approved by the Board, as declared in the Circular dated 08/05/1991 at Annexure-(I) to the affidavit-in-reply. The Rules prescribed by the Government on the subject of Compulsory Retirement are contained in Chapter – IX of the Bombay Civil Services Rules, 1959 and the relevant part of Rule 161 thereof reads as under : -

"161(1) (a) xxxxx

(aa) Notwithstanding anything contained in clause (a) :-

(i) An appointing Authority shall, if he is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant to whom clause (a) applies by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice :

(1) If he is in Class I or Class II service or post or in any unclassified gazetted post, the age limit for the purpose of direct recruitment to which is below 35 years, on or after the date on which he attains the age of 50 years and

> *(2) If he is in any other service or post, the age limit for the purpose of direct recruitment to which is below 40 years, on or after the date on which he attains the age of 55 years."*
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> *(emphasis supplied)*

8. In view of the above legal provisions and position on the subject, it was submitted that once the opinion was formed by the Appointing Authority that it was in the public interest so to do, it was the absolute right of that Authority to retire the officer concerned and it was in exercise of that right that the petitioner was pre-maturely retired from service in public interest. Again it was not a personal decision of the highest authority but, as stated in the affidavit-in-reply, a Committee was constituted and after consideration of over-all record and working of the petitioner, it was found, that it was not in the public interest to continue the petitioner. Therefore, the argument of the action being arbitrary or without any legal basis could not be sustained according to the submission. It was also submitted that some adverse remarks were

admittedly recorded in the service record of the petitioner and no point of positive merit is even canvassed in favour of the petitioner. Wider issue of public interest cannot be decided merely with reference to Confidential Reports or adverse remarks in the service record of an officer and this court cannot sit in appeal over the exercise of discretion by the Appointing Authority, according to the submission.

9. The Learned counsel for the respondent relied upon the recent judgment of this Court in **Special Civil Application No. 9185 of 1998** wherein, after referring to several judgments of the Supreme Court, it was held that when no allegations of *mala fide* were made out, it was not possible for the Court to overrule the findings of the Committee that petitioner was 'dead-wood' required to be retired. It is also held that Court cannot examine the findings of the Committee as an Appellate Court and cannot set it aside, even if another view is possible, because it is entirely upto the employer to

assess the service performance of the petitioner to decide upon his retention beyond the age of 50 years. In another judgment of this Court in ***N.M.Chaudhari v. State of Gujarat & Anr. [1992 (2) GCD 996(Guj)]***, it is held that the Government is empowered and it is within its competence to compulsorily retire its officer in public interest with a view to improve efficiency of the administration or to weed out the people who are of doubtful integrity or are corrupt. The obligation of the government, while dealing with such matters, is to consider the entire record of the government servant including the latest reports. Compulsory retirement is not a punishment and the officer who is ordered to compulsorily retire is entitled to all the pensionary benefits. The object underlying the provision as contained in Rule 161 of the Bombay Civil Services Rules, 1959 enabling the appointing authority to compulsorily retire an officer before he attains the prescribed age of superannuation is to energize the administration and make it more efficient by chopping of deadwood and to ensure that a key post is held by a person of

undoubtful ability and integrity.

10. In ***U.K.Desai v. Gujarat Electricity Board [(1982) 2 GLR 625]*** it is observed by this Court that the Rule for compulsory retirement is one of the facets of doctrine of pleasure under Article 310 and gives an absolute right to the Government and not merely a discretion and therefore, impliedly it excludes the rules of natural justice.

11. The judgment of Supreme Court in ***I.K.Mishra v. Union of India (AIR 1997 SC 3940)*** was relied in support of the proposition that when the order of compulsory retirement of an officer was based on material on record, it cannot be branded as arbitrary.

12. In view of the adoption by the respondent of the rules and procedure prescribed by the Government from time to time in respect of administrative matters, it cannot be said that the impugned action of

compulsorily retiring the petitioner was illegal due to absence of any rules in that behalf. The elaborate representation of the petitioner also leaves no room to doubt that the petitioner had unilaterally and unequivocally decided to abandon his service and that he had so many complaints against almost all the superior officers. Therefore, whether the representation was treated as resignation and whether it could have been accepted or withdrawn before that, are the questions which would arise subsequently. But whether it would have been in public interest to continue such officer would have been the question immediately before the respondent. It appears from the record that the respondent had constituted the Personnel Committee for consideration of that issue and Committee found it to be in public interest to pre-maturely retire the petitioner. The decision of the Committee, in the circumstances, appears to be more reasonable and justified than arbitrary or *mala fide* and no reason is made out to interfere with the impugned order by which the officer, who was admittedly not interested in

continuing his service, was compulsorily retired without any stigma. And once the impugned order of compulsory retirement is upheld, subsequent events of acceptance of resignation under one or the other misapprehension becomes meaningless simply because a person who is legally retired cannot resign and there cannot be any question of acceptance or non-acceptance of such resignation or his withdrawl of resignation before acceptance. It is stated at the Bar that other pecuniary or minor prayers are not pressed in view of the fact that all the retiral benefits pursuant to the impugned order have been disbursed to the petitioner.

13. In the second petition, being Special Civil Application No. 9671 of 1998, the petitioner has alleged that denial of promotion to the petitioner as Superintending Engineer (Civil) was arbitrary, illegal, *mala fide* and in colourable exercise of power in the background of facts discussed hereinabove. It is averred in the petition that the petitioner had become an eyesore to the respondent

Corporation and to the top management on account of his insisting upon enquiries into various financial irregularities in the working of the Corporation. It was submitted that when the post of Superintending Engineer had fallen vacant, instead of giving promotion to the petitioner, who was the senior most Executive Engineer at the relevant time, the post was filled up by way of deputation in violation of the rules. In the petition filed praying for promotion as Superintending Engineer with effect from 29.6.1995, being Special Civil Application No. 26 of 1995, this Court has, by order dated 14.7.1997, directed the respondent Corporation to consider the claim of the petitioner for promotion in accordance with the relevant recruitment rules and if he were found to be suitable for such promotion, to grant deemed promotion; even as the Court was informed that he had already been compulsorily retired form service on 10.6.1997. The petitoner's application alleging contempt of Court, being Miscellaneous Civil Application No. 1086 of 1998, has been rejected by the Division Bench of this Court by order dated

16.12.1999 after taking note of the respondent's averments on oath that the petitioner's case was considered by the Personnel Committee, which was the competent authority for the purpose, in its meeting dated 3.7.1996 and the petitioner was not found suitable for promotion. In the facts and circumstances, it was fairly conceded that, obviously when the petitioner was not found to be fit for being retained in service and if the challenge to his compulsory retirement were to fail, the question of promotion was a far cry and a writ of mandamus to promote the petitioner could not be issued. Accordingly, the second petition also fails.

14. In the above facts and circumstances, both the petitions are dismissed and rule is discharged with no order as to costs.

(D.H.Waghela, J.)

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